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No. 95-823

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

EMPLOYERS RESOURCE MANAGEMENT COMPANY, INCORPORATED; AMERICAN EMPLOYERS BENEFIT TRUST,
Petitioners,

v.

PRESTON C. SHANNON, Commissioner,
THEODORE V. MORRISON, JR., Commissioner,
HULLIHEN WILLIAMS MOORE, Commissioner,
STEVEN T. FOSTER, Commissioner of Insurance,
BUREAU OF INSURANCE OF THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

ALLAN J. GRAF
Counsel of Record
FARMER & RIDLEY
444 South Flower Street
Suite 2300
Los Angeles, CA 90071-3033
(213) 626-0291
Counsel for Petitioners

Of Counsel:
ROBERT W. RIDLEY
444 South Flower Street
Suite 2300
Los Angeles, CA 90071-3033
(213) 626-0291

Bowne of Los Angeles, Inc., Law Printers (213) 627-2200

QUESTIONS PRESENTED FOR REVIEW

(1) Whether Congress, in enacting Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3), "expressly authorized" federal courts to enjoin state court proceedings within the meaning of the Anti-Injunction Act, 28 U.S.C. §2283?

(2) Whether a federal court may, with respect to matters within its exclusive jurisdiction, enjoin state court proceedings involving such matters under the Anti-Injunction Act, 28 U.S.C. §2283, on the grounds that such injunction is "necessary in aid of its jurisdiction"?

(3) Whether the District Court below abused its discretion when it abstained under the principles enunciated in *Younger v. Harris,* 401 U.S. 37 (1971), from exercising its jurisdiction to decide the merits of the Petitioners' claims of federal pre-emption of state law when Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1), confers upon the district courts of the United States exclusive jurisdiction over such claims?

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BUREAU OF INSURANCE OF THE STATE CORPORATION COMMISSION OF THE COMMONWEALTH OF VIRGINIA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Employers Resource Management Company, Incorporated and American Employers Benefit Trust respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.[1]

OPINIONS BELOW

The opinion of the Court of Appeals (*App., infra,* 1a - 21a) is reported at 65 F.3d 1126. The opinion of the District

[1] Petitioners have no parent, subsidiary or affiliate corporations.

Court (*App., infra,* 22a - 41a) is reported at 869 F.Supp. 398.

JURISDICTION

The Court of Appeals entered its judgment on September 19, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

A. The Anti-Injunction Act, 28 U.S.C. §2283, reads as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

B. Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132(a)(3), reads as follows:

> "A civil action may be brought —
>
> * * *
>
> "(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;"

C. Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1), reads as follows:

> "Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section."

STATEMENT

Employers Resource Management Company, Inc. ("ERM"), one of the Petitioners herein, is the fiduciary of Plan No. 502, an employee welfare benefit plan subject to the provisions of ERISA. American Employers Benefit Trust (the "Trust"), the other Petitioner herein, is a trust established pursuant to Section 403(a) of ERISA, 29 U.S.C. §1103(a), for the purpose of holding in trust all of the assets of Plan No. 502.

ERM and the Trust brought an action in the United States District Court for the Eastern District of Virginia for injunctive and declaratory relief in order to enjoin the Respondents herein, the Commissioners of the State Corporation Commission of the Commonwealth of Virginia and the Commissioner of Insurance of the Commonwealth of Virginia (hereinafter collectively referred to as the "Corporation Commission") from taking any action to subject Plan No. 502, ERM and the Trust to regulation under the laws of the Commonwealth of Virginia governing and regulating insurance on the grounds that Section 514(a) of ERISA, 29 U.S.C. §1144(a), pre-empts and supersedes the application of Virginia's insurance laws to self-funded employee welfare benefit plans subject to ERISA. The Corporation Commission, which had instituted proceedings in February, 1994 to

enjoin Petitioners from offering and administering the Plan in the Commonwealth of Virginia, contends that Plan No. 502 is not an employee welfare benefit plan subject to ERISA. Alternatively, the Corporation Commission asserts that if Plan No. 502 is an ERISA plan, such Plan is a multiple employer welfare arrangement ("MEWA") pursuant to Section 3(40) of ERISA, 29 U.S.C. §1002(40), and, therefore, subject to regulation in accordance with the laws of the Commonwealth of Virginia governing insurance pursuant to Section 514(b)(6) of ERISA, 29 U.S.C. §1144(b)(6).

Neither the District Court below (*App., infra,* 26a) nor the Court of Appeals (*App., infra,* n.1, 3a) ruled on the merits of Petitioners' Complaint for relief. Instead, the District Court dismissed Petitioners' Complaint on the grounds that the Anti-Injunction Act, 28 U.S.C. §2283, barred the District Court from either issuing the injunction or granting the declaratory judgment requested by Petitioners because the Corporation Commission, in its quasi-judicial capacity, had commenced proceedings against Petitioners prior to the filing of the action herein. The District Court also held that it must abstain from deciding the case under the principles enunciated by this Court in *Younger v. Harris, supra,* 401 U.S. 37 (1971), even if the Anti-Injunction Act did not bar the District Court from granting the injunctive and declaratory relief requested by Petitioners. The District Court's decision was affirmed by the Court of Appeals.

A. Statement of Facts

ERM is in the business of providing co-employment services on a long-term basis to its client employers. Pursuant to a Co-Employment Agreement entered into with its co-employer clients, ERM assumes the responsibility for certain employer obligations and liabilities, including but not

limited to the providing and administering of employee welfare benefits, the paying of wages and salaries and the paying of withholding and social security taxes. All such taxes are paid under ERM's employer identification number. ERM also issues to each employee the Form W-2 prescribed by the Internal Revenue Service, and ERM is designated as the employer on such form. Pursuant to the Co-Employment Agreement, ERM has the right to control and direct employer functions and responsibilities such as hiring, recruiting, training, work and performance evaluations, discipline and termination of employment. ERM established and administers a work safety program with which all the co-employer clients and co-employees of ERM are required to comply. ERM and its clients are, in effect, the co-employers of the individual employees involved. ERM has approximately 1,200 co-employer clients in thirteen states, including Virginia, and there are more than 5,500 co-employees working in forty-three states and Puerto Rico.

ERM has established and maintains an employee welfare benefit plan providing certain hospital and medical benefits, dental benefits, death benefits, accidental death and dismemberment benefits and occupational injury and illness benefits. Basic mandatory medical benefits are provided to all employees, paid for exclusively by ERM's client co-employers without any contribution from employees. The participants in the Plan are all individual co-employees of ERM and jointly employed by ERM and other employers.

B. The Proceedings Below

On February 18, 1994, the Corporation Commission filed an Order to Take Notice against ERM and the Trust notifying them that the Corporation Commission intended to enter a cease-and-desist order against ERM and the Trust to bar them from operating in Virginia on the grounds that

ERM and the Trust constituted a multiple employer welfare arrangement subject to regulation by Virginia's insurance laws. On March 3, 1994, ERM and the Trust filed a timely petition for removal of this action to the United States District Court for the Eastern District of Virginia pursuant to 28 U.S.C. §1441(b). *Commonwealth of Virginia v. Employers Resource Management Company, Inc.*, Civil Action No. 3:93-CV-157.

Also on March 3, 1994, simultaneously with the filing of the petition for removal, ERM and the Trust filed an independent action in the United States District Court for the Eastern District of Virginia seeking injunctive and declaratory relief to bar the Corporation Commission from subjecting the Trust and the Plan to regulation under Virginia's insurance laws. *Employers Resource Management Company, Inc., et al. v. Preston C. Shannon, et al.*, Civil Action No. 3:94-CV-148. The relief was sought on the grounds that ERM had established and maintains an employee welfare benefit plan subject to ERISA and that such plan is not a multiple employer welfare arrangement under ERISA. Subject matter jurisdiction in the District Court below was predicated upon Section 502(a)(3) and Section 502(e)(1) of ERISA, 29 U.S.C. §1132(a)(3) and §1132(e)(1), which grant to the District Courts of the United States exclusive jurisdiction "to enjoin any act or practice which violates any provision of [ERISA]." Subject matter jurisdiction in the District Court below was also predicated upon 28 U.S.C. §1331.

The Corporation Commission filed a motion to remand the action entitled *Commonwealth of Virginia v. Employers Resource Management Company, Inc.*, Civil Action No. 94:3-CV-157. The Corporation Commission also filed a Motion to Dismiss, Stay or Abstain and Motion for Judgment on the Pleadings in *Employers Resource Management Company, Inc., et al. v. Preston C. Shannon, et al.*, Civil

Action No. 94:3-CV-148. By that motion, the Corporation Commission sought dismissal of Petitioners' Complaint for injunctive and declaratory relief on the grounds that (i) the Anti-Injunction Act, 28 U.S.C. §2283, barred all the relief sought by Petitioners in their Complaint, (ii) the District Court must abstain from exercising its jurisdiction under the principles set forth in *Younger v. Harris, supra,* 401 U.S. 37 (1971), and (iii) the ERM Plan was a multiple employer welfare arrangement subject to regulation under the insurance laws of the Commonwealth of Virginia.

The Corporation Commission's Motion to Remand and the Motion to Dismiss, Stay or Abstain and Motion for Judgment on the Pleadings came on for hearing before the District Court on June 10, 1994. The District Court reserved decision on all motions but directed the parties to complete discovery on the issue of ERM's status as an employer under ERISA. After completion of discovery, the parties prepared and filed Joint Stipulations of Fact. The Petitioners and the Corporation Commission submitted supplemental memoranda of law at the direction of the District Court on the issues of whether ERM is an employer under ERISA and whether the employee welfare benefit plan established and maintained by ERM is a multiple employer welfare arrangement.

On November 22, 1994, the District Court issued its Order granting the Corporation Commission's Motion. The District Court also granted the Corporation Commission's Motion to Remand in the case *Commonwealth of Virginia v. Employers Resource Management Company, Inc.,* Civil Action No. 3:94-CV-157.[2]

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[2]The District Court granted the Corporation Commission's Motion to Remand on the grounds that the District Court lacked subject matter jurisdiction under 28 U.S.C. §1331. The District Court held that the "well pleaded complaint" rule precluded "federal question" jurisdiction (*App., infra,* 26a-28a). Petitioners disagree with the District Court's

The District Court expressly did not decide the merits of the case as to whether ERM is an employer under ERISA and whether the employee welfare benefit plan established and maintained by ERM is a multiple employer welfare arrangement (*App., infra*, 26a). The District Court ruled only that Petitioners' pre-emption claim was not "facially conclusive" (*App., infra*, 39a-40a). After entry of the District Court's Order granting the Respondents' Motion to Dismiss, Stay or Abstain and dismissing the Petitioners' Complaint, Petitioners filed a timely appeal to the Court of Appeals.

The Court of Appeals had jurisdiction over the appeal pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 1292(a)(1). On September 19, 1995, the Court of Appeals affirmed the District Court in all respects.

The Court of Appeals, acknowledging that "[o]ther circuits are divided on the issue" (*App., infra,* 10a), held that ERISA does not expressly authorize the federal courts to enjoin state court proceedings within the meaning of the Anti-Injunction Act. The Court of Appeals reasoned that ERISA's legislative history did not indicate any "distrust of state courts" on the part of Congress and that such a showing would be necessary before a federal statute could be construed as expressly authorizing injunctions against state court proceedings (*App., infra,* 9a and 14a).

The Court of Appeals also affirmed the District Court's decision to dismiss Petitioners' Complaint on the grounds of *Younger* abstention; although the Court recognized that "the federal-state balance, which *Younger* abstention is designed to maintain, has been skewed sharply in favor of the federal system in the ERISA context" (*App., infra,* 19a) and that "Congress has made it clear under ERISA

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decision, but 28 U.S.C. §1447(d) precluded any appeal or review of the District Court's Order of Remand.

. . . that federal interests outweigh competing state interests" (*App., infra,* 20a). The Court of Appeals held that abstention was mandated under *Younger* unless a party could show that it "would be injured by having to raise its pre-emption defense in the state proceedings rather than in federal district court." (*App., infra,* 20a).

REASONS FOR GRANTING THE PETITION

The Court of Appeals acknowledged that "[o]ther circuits are divided on the issue of whether ERISA carves an exception into the Anti-Injunction Act that enables federal courts to enjoin state proceedings when a party raises a question of federal law under ERISA" (*App., infra,* 10a). One may expect more conflicting decisions in the district courts without authoritative guidance from this Court on the issue. In *A T & T Management Pension Plan v. Tucker,* case no. CV-95-2263 ABC (JRx), 1995 U.S. Dist. LEXIS 14148 (C.D.Ca. August 14, 1995), the United States District Court for the Central District of California just recently enjoined a state court proceeding enforcing an order entered in a marital dissolution case on the grounds that enforcement of such order was pre-empted by ERISA.

This case also brings to this Court an opportunity to resolve two apparently conflicting decisions of this Court on the issue of whether a federal court may enjoin a state court proceeding which involves subject matter over which Congress has conferred exclusive jurisdiction on the federal courts. In *Capital Service, Inc. v. National Labor Relations Board,* 347 U.S. 501 (1954), this Court suggested that, in such circumstances, a federal court may enjoin a state court proceeding as being "necessary in aid of its jurisdiction." In *Vendo Company v. Lektro-Vend Corporation,* 433 U.S. 623 (1977), the lead opinion of that case suggested that the "necessary in aid of its jurisdiction" exception to the Anti-Injunction Act does not automatically permit a federal court

to enjoin state court proceedings relating to matters within the federal court's exclusive jurisdiction.

Finally, Petitioners bring to this Court one other important and recurring issue which also concerns the relations between and the respective roles of federal and state courts in cases raising substantial questions of federal law. The decision of the District Court below to abstain from exercising its jurisdiction under the principles enunciated by this Court in *Younger v. Harris, supra,* 401 U.S. 37 (1971), which was affirmed by the Court of Appeals, misconstrues the deference which federal courts owe to state courts. The Court of Appeals was in error when it ruled that abstention by a federal court in favor of prior state court proceedings is mandated unless it can be shown by a party that "it would be injured by having to raise its pre-emption defense in the state proceedings rather than in federal district court." (*App., infra* 20a). Adherence to such a standard will upset the balance between federal and state courts in those areas where Congress has elected to confer upon the federal courts exclusive jurisdiction to decide claims specifically created by federal law. The principles of federal-state comity on which *Younger* is premised should not be construed to require a federal court to abstain from exercising jurisdiction over federal law claims involving matters where federal preemption of state law is virtually complete and over which Congress has conferred exclusive jurisdiction upon the federal courts.

A. The Circuits Are Divided on Whether ERISA Expressly Authorizes Federal Courts to Enjoin State Court Proceedings Within the Meaning of the Anti-Injunction Act

The United States Courts of Appeals are divided on the issue of whether ERISA is a statute in which Congress has "expressly authorized" the federal courts to enjoin state court proceedings within the meaning of the Anti-Injunction

Act, 28 U.S.C. §2283. The Courts of Appeals for the Second and Sixth Circuits have held that Congress intended ERISA to be an exception to the Anti-Injunction Act. The Court of Appeals in this case, as well as the United States Courts of Appeals for the Third and Fifth Circuits, have held that Congress did not so intend. This Court has never expressly decided the issue.

In *General Motors Corporation v. Buha*, 623 F.2d 455 (6th Cir. 1980), the United States Court of Appeals for the Sixth Circuit held that Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3), was a Congressionally authorized exception to the Anti-Injunction Act. Since Congress empowers plan fiduciaries to obtain injunctive relief enjoining violations of ERISA or enforcing its provisions, a federal court would not be barred from enjoining state court proceedings which violate the broad pre-emption provision of ERISA (623 F.2d at 459). In *Gilbert v. Burlington Industries, Inc.*, 765 F.2d 320 (2d Cir. 1985), *aff'd without opinion*, 477 U.S. 901 (1986), the United States Court of Appeals for the Second Circuit similarly held that Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3), is an "expressly authorized" exception to the Anti-Injunction Act. Several District Courts have also ruled that ERISA constitutes an exception to the Anti-Injunction Act. *Cartledge v. Miller*, 457 F.Supp. 1146, 1151-1152 (S.D.N.Y. 1978), and *Senco of Florida, Inc. v. Clark*, 473 F.Supp. 902, 904-905 (M.D. Fla. 1979). Just recently, the United States District Court for the Central District of California held that ERISA expressly authorizes federal courts to enjoin state court proceedings which may violate ERISA's pre-emption provisions. *A T & T Management Pension Plan v. Tucker, supra*, 1995 U.S. Dist. LEXIS 14148 (C.D.Ca. 1995).

The United States Courts of Appeals for the Third and Fifth Circuits take the contrary view and hold that ERISA is not an exception to the prohibitions of the Anti-Injunction

Act. *United States Steel Corporation Plan for Employee Insurance Benefits v. Musisko*, 885 F.2d 1170 (3rd Cir. 1989), *cert. denied*, 493 U.S. 1074 (1990); *The 1975 Salaried Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers*, 968 F.2d 401 (3rd Cir. 1991); and *Total Plan Services, Inc. v. Texas Retailers Association, Inc.*, 925 F.2d 142 (5th Cir. 1991). These were the decisions relied on by the Court of Appeals in the instant case when it affirmed the District Court's dismissal of Petitioners' Complaint on the grounds that the Anti-Injunction Act barred the relief being sought.

The decisions of the Second and Sixth Circuits more truly accord with Congress' expressed intent in enacting the very broad and expansive pre-emption provision found in ERISA and coupling it with a grant of exclusive jurisdiction to the federal courts over claims involving pre-emption of state law by ERISA [29 U.S.C. §1132(e)(1)]. The decisions of the Second and Sixth Circuits also more truly conform with this Court's decision in *Mitchum v. Foster*, 407 U.S. 225 (1972), which established the test for determining whether Congress, in enacting a particular statute, intended to authorize injunctions against state court proceedings.

In *Mitchum*, this Court stated the test as follows:

> "... a federal law need not expressly authorize an injunction of a State court proceeding in order to qualify as an exception. * * * The test, rather, is whether an Act of Congress, clearly creating a federal right or remedy enforceable in a federal court of equity, could be given its intended scope only by the stay of a State court proceeding." (407 U.S. at 237-238).

This test may have been possibly refined in a subsequent decision of the Supreme Court in which there was no majority opinion. In *Vendo Company v. Lektro-Vend Corporation, supra*, 433 U.S. 623 (1977), this Court's lead opinion discussed the *Mitchum* test as follows:

> "By limiting the statutory exception of §2283 and its predecessors to these few instances, we have clearly recognized that the Act countenancing the federal injunction must necessarily interact with, or focus upon, a state judicial proceeding" (433 U.S. at 640-641).

ERISA satisfies all of these tests. Congress, in enacting Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3), obviously created a "uniquely federal right or remedy"; since the federal courts have exclusive jurisdiction over any civil action to enjoin violations of ERISA or to enforce any of its provisions pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1). ERISA also satisfies the second part of the Court's test. ERISA "could be given its intended scope only by the stay of a State court proceeding." *Mitchum v. Foster, supra*, 407 U.S. at 238. In *Vendo Company v. Lektro-Vend Corporation, supra*, it was noted that a federal statute may be found to satisfy this second part of the *Mitchum* test and to come within the "expressly authorized" exception of the Anti-Injunction Act "if there exists sufficient evidence in the legislative history demonstrating that Congress recognized and intended the statute to authorize injunction of state-court proceedings." (433 U.S. at 633). ERISA's legislative history clearly demonstrates from the interaction between ERISA's broad pre-emption provision and ERISA's grant of exclusive federal jurisdiction over suits in equity raising pre-emption claims that ERISA can be given its intended scope only by empowering the federal courts to enjoin state court proceedings.

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), this Court extensively reviewed ERISA's legislative history relating to pre-emption. That legislative history made manifest Congress' intention to displace all state regulation of employee benefit plans (463 U.S. at 99). This Court, in subsequent decisions, has consistently reaffirmed that the purpose of ERISA is to establish employee benefit plan regulation "as exclusively a federal concern." *Pilot Life Insurance Company v. Dedeaux*, 491 U.S. 41, 46 (1987); *FMC Corporation v. Holliday*, 498 U.S. 52, 56 (1990); and *Ingersoll-Rand Company v. McClendon*, 498 U.S. 133, 137 (1990). The broad scope of ERISA pre-emption is further emphasized by the definition of "State law" under the statute. In *Ingersoll-Rand Company v. McClendon, supra*, 498 U.S. at 137, this Court noted that "to underscore its intent that §514(a) be expansively applied, Congress used equally broad language in defining the 'State law' that would be pre-empted." Section 514(c)(1) defines "State law", in relevant part, as follows:

> "For purposes of this section: (1) The term 'State law' includes all laws, decisions, rules, regulations, or other *State action having the effect of law*, of any State." (emphasis added)

The term "State action" necessarily includes state court proceedings. *Shelley v. Kraemer*, 334 U.S. 1 (1948). ERISA, thus, focuses upon and interacts with state judicial proceedings as the lead opinion in this Court's decision in *Vendo Company v. Lektro-Vend Corporation, supra*, 433 U.S. at 640-641, suggests is required in order to meet the second test established in *Mitchum v. Foster, supra*, 407 U.S. 225 (1972).

In furtherance of this objective of uniform federal regulation of employee benefit plans, Congress, in Section 502(e)(1) of ERISA, 29 U.S.C. §1132(e)(1), conferred upon the federal courts exclusive jurisdiction over suits for

equitable relief brought pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. §1132(a)(3). ERISA's statutory design is, thus, premised on the exclusive jurisdiction of the federal courts to decide claims of ERISA pre-emption. The obvious purpose of exclusive federal jurisdiction is to reinforce Congress' objective of establishing uniform federal regulation of employee benefit plans. When these statutory provisions are read and construed together, it is readily apparent that Congress expressly authorized federal courts to enjoin pending state court proceedings.

ERISA is notable as federal legislation precisely because of the almost unique combination of a very expansive federal pre-emption of all state law relating to its subject matter with exclusive federal jurisdiction over suits to enforce its provisions. It is this combination that distinguishes ERISA from most of the federal statutes which were found not to have "expressly authorized" injunctions of state court proceedings.

Neither the Court of Appeals in this case nor the Courts of Appeals for the Third and Fifth Circuits in *Musisko, supra,* 885 F.2d 1170 (3rd Cir. 1989), *Texas Retailers Association, Inc., supra,* 925 F.2d 142 (5th Cir. 1991), and *Nobers, supra,* 968 F.2d 401 (3rd Cir. 1992), considered the legislative history of ERISA as an adequate expression of Congress' intention to authorize injunctions of state court proceedings. These Courts, misconceiving the second part of the *Mitchum* test, held that there must be a showing that Congress distrusted the state courts to protect or enforce federal rights (*App., infra,* 14a). While such a showing was sufficient in connection with civil rights claims under 42 U.S.C. §1983, this Court nowhere suggested in *Mitchum* that this was the exclusive test for establishing that a federal statute authorized injunctions of state court proceedings. What this Court observed in *Mitchum* about the legislative history of the Civil Rights Act was Congress' expressed

intention to give to the federal courts the primary responsibility for the protection of civil rights:

> "This legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights. . . ." (407 U.S. at 242).

It cannot be challenged that ERISA dramatically altered the relationship between the federal government and the states with respect to employee benefit plans. Coupling broad pre-emption, intended to displace all state laws and regulation except in limited circumstances, with exclusive federal jurisdiction over pre-emption claims is the clearest evidence that Congress intended to give to federal courts the power to enjoin state court proceedings which encroach upon this subject matter.

The exclusive jurisdiction of the federal courts would be substantially frustrated and compromised unless the federal courts were empowered to stay state court proceedings. A state, seeking to subject an employee benefit plan to state law or regulation as in the instant case, would need only to institute a state court suit to oust a federal court from its exclusive jurisdiction over claims of ERISA pre-emption. A plan or its fiduciaries would, thus, not be able to seek injunctive and declaratory relief to bar pre-empted state action because of the limitations on standing imposed by Article III of the Constitution. In order for federal judicial power to be exercised, there must exist a "case or controversy." This Court has held on several occasions that a person does not have standing to challenge the constitutionality of state law merely because he or she is within the class of persons subject to the statute. See *e.g., Poe v. Ullman*, 367 U.S. 497 (1961). In effect, a fiduciary who is potentially aggrieved by a pre-empted state law may lack standing to challenge the law because an immediate, direct threat of

enforcement of that state law may be lacking. By initiating state court proceedings, a state could compel decision of claims of pre-emption by state courts despite the fact that it was the intention of Congress to have such claim decided exclusively in federal court.

B. This Court Should Definitively Resolve the Issue of Whether a Federal Court May, With Respect to Matters in Its Exclusive Jurisdiction, Enjoin State Court Proceedings Under the Anti-Injunction Act Involving Such Matters

The instant case presents an opportunity to this Court to resolve an apparent conflict in earlier decisions of this Court on whether federal courts have the power under the Anti-Injunction Act to enjoin state court proceedings involving matters over which Congress has conferred exclusive jurisdiction upon the federal courts. In *Capital Service, Inc. v. National Labor Relations Board, supra,* 347 U.S. 501 (1954), this Court held that where Congress granted to a federal agency exclusive jurisdiction over a class of claims, the federal agency may act to preserve its exclusive jurisdiction by enjoining state court proceedings which invade the federal agency's exclusive jurisdiction. Such an injunction is justified as an exception to the Anti-Injunction Act because it is "necessary in aid of" the federal agency's "jurisdiction", which is the second exception specified in the Anti-Injunction Act:

> "But where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a State would result in a conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right." (347 U.S. at 504).

This rationale should be applicable to all matters over which Congress has conferred exclusive jurisdiction upon the federal courts.

The holding of this Court in *Capital Service, Inc.* is called into question by this Court's decision in *Vendo Company v. Lektro-Vend Corporation, supra*, 433 U.S. 623 (1977).[3] There was no majority opinion in that case. The lead opinion, joined in by three Justices, did state that the exclusive federal jurisdiction of the Clayton Act did not support a stay of state court proceedings as "necessary in aid of" the federal court's jurisdiction within the meaning of the Anti-Injunction Act (433 U.S. at 641-643). Two Justices concurred in the case result in a separate opinion that did not explicitly consider this exception to the Anti-Injunction Act. Four Justices dissented from the result. It should be noted that the federal anti-trust laws do not pre-empt the entire field of trade regulation involving monopolistic and anti-competitive practices. See, *e.g., Rice v. Norman Williams Company*, 458 U.S. 654 (1982), where this Court discussed the more limited nature of federal anti-trust law pre-emption. Federal law pre-empts state law in this field only when the two irreconcilably conflict (458 U.S. at 659). ERISA pre-emption, however, is of an entirely different order. ERISA pre-empts the field displacing virtually all

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[3]This Court's decision in *Amalgamated Clothing Workers of America v. The Richman Brothers*, 348 U.S. 511 (1955) cannot be construed to be a rejection by this Court of the proposition that a federal court may enjoin state court proceedings involving matters over which the federal courts have exclusive jurisdiction. In that case, this Court held a stay of state court proceedings was not permitted under the Anti-Injunction Act to aid the federal court's jurisdiction because the federal court had no subject matter jurisdiction in the first place. In that case, the federal court had exclusive jurisdiction only in suits brought by the National Labor Relations Board. Therefore, a private litigant could not seek a stay of a state court action from a federal court; even though the state court action might interfere with the enforcement of federal law.

state laws relating to employee benefit plans even if such laws do not conflict with ERISA. *MacKey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825, 829-830 (1988).

This case may serve to clarify the law on whether a federal court may enjoin state court proceedings involving matters falling within the exclusive jurisdiction of the federal courts. Petitioners believe that this Court's decisions in the *Capital Service, Inc.* case, *supra*, 347 U.S. 501 (1954), and the *Vendo Company* case, *supra*, 433 U.S. 623 (1977), can be reconciled. Where federal law pre-empts an entire field with the purpose of displacing state law on that subject matter and also confers exclusive jurisdiction upon the federal courts to decide claims involving the pre-empted area, a stay of state court proceedings would be mandated as being "necessary in aid of" the federal court's jurisdiction. In such a situation, Congress has evidenced its intent to make the federal courts the sole decision makers in the area and to foreclose the state courts from the area. The federal anti-trust laws are critically different from ERISA. Although Congress has granted exclusive jurisdiction to the federal courts to give the statutory remedies for violations of the Sherman and Clayton Acts, Congress has not pre-empted the field of trade regulation. State laws in this area are pre-empted only when they irreconcilably conflict with federal law. Thus, in any pre-emption dispute, the construction and interpretation of state law remains a critical element of the case. This Court should, nevertheless, provide express guidance to the lower federal courts on this issue.

C. The Court of Appeals Was in Error When It Affirmed the District Court's Decision to Abstain on *Younger* Grounds Because the District Court Has Exclusive Jurisdiction Over Petitioners' Claims

In *Younger v. Harris, supra*, 401 U.S. 37 (1971) and in subsequent cases, this Court has delineated the circum-

stances in which a federal court should abstain in favor of prior ongoing state judicial or administrative proceedings. Abstention is the general rule where the state proceedings involve vital state interests and further provide an adequate opportunity to raise federal constitutional challenges to state law. The Court of Appeals has, however, seriously misconstrued the principles underlying *Younger* abstention. Instead, it has fashioned a test for making the decision to abstain or not to abstain that ignores the paramountcy of certain fundamental federal interests which is manifest when Congress chooses to confer matters to the exclusive jurisdiction of the federal courts.

Younger abstention is grounded in the basic notions of federalism. Inherent in the concept of federalism is the balance between the interests of the states and the interests of the national government. *Younger v. Harris, supra*, 401 U.S. at 44:

> "The concept [of 'Our Federalism'] does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States."

Thus, proper application of *Younger* abstention requires the federal court to weigh the countervailing state and federal interests at stake. In many cases, the federal interest involved is not as important as the particular state interest, especially the state's interest in not having the federal courts interfere with the state's judicial and administrative

processes. This is true because state courts are presumed fully competent to decide issues of federal law and to protect federal interests in the event of any conflict with state interests.

In *New Orleans Public Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350 (1989) ["*NOPSI*"], this Court provided some further guidance on the propriety of abstention in favor of state judicial or administrative proceedings.[4] In that case, this Court held that the presence of even a substantial claim of federal pre-emption was not, in and of itself, sufficient to outweigh a state's interest in non-interference with its judicial proceedings (491 U.S. at 365). Rather, this Court held that federal courts must weigh the importance of the "generic proceedings" to the state against the importance of the conflicting federal interests. The focus of such inquiry cannot be narrowly limited to the "outcome" of the claim of federal pre-emption in any particular case.

There are, however, areas in which the federal interest in the "generic proceedings" outweighs the state's interest. With respect to these matters, Congress has made a decision to pre-empt the field and displace all state law relating to that field. Indeed, the *NOPSI* case illustrates the application of *Younger* abstention to cases involving so-called "conflict pre-emption" as distinct from so-called "field pre-emp-

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[4] In *NOPSI*, the precise issue was the conflict between the Federal Energy Regulatory Commission's authority to regulate interstate power transactions and the authority of the State of Louisiana to regulate intrastate retail rates for public power. This Court observed that federal law in this area was structured upon state regulation of public utilities. The Natural Gas Act, regulating interstate transactions only, was intended to be a limited and circumscribed intrusion in the authority of states to regulate the intrastate costs of public power (491 U.S. at 365).

tion."[5] In situations involving "conflict pre-emption," Congress did not intend federal legislation to pre-empt the field and, thus, displace all state law and regulation in that field. Rather, Congress intended to preserve the fundamental role of state law and regulation. Pre-emption occurs only when state law cannot be harmonized with federal law. State law is a principal element in the pre-emption issue to be resolved. In cases involving "conflict pre-emption," the decision to abstain cannot turn on the "outcome" of the particular pre-emption dispute because such focus ignores the larger Congressional purpose to preserve the basic role of state law in a given area. In cases involving "conflict pre-emption," a federal court's refusal to abstain from interfering with ongoing state judicial or administrative proceedings would be unnecessarily intrusive and contrary to principles of federalism precisely because Congress intended to preserve the role of state law in the particular area.

In cases involving "field pre-emption," however, the federal interest in the "generic proceedings" is inherently the paramount interest regardless of the outcome of the particular pre-emption dispute. This is because Congress has made the decision to displace all state law from a field. Courts do not intrude upon state interests when Congress makes a constitutionally permissible decision to pre-empt a field. In such cases, issues of state law are irrelevant. The only issue is how much of the field is Congress pre-empting. That issue is resolved exclusively by reference to federal law.

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[5] In *Schneidewind v. ANR Pipeline Company*, 485 U.S. 293 (1988), this Court again reaffirmed the distinction between "field" and "conflict" pre-emption:

"Congress explicitly may define the extent to which its enactments pre-empt state law. . . . * * * Congress implicitly may indicate an intent to occupy a given field to the exclusion of state law. * * * Finally, even where Congress has not entirely displaced state regulation in a particular field, state law is pre-empted when it actually conflicts with federal law." (485 U.S. at 299-300).

ERISA, among all of the federal statutes, makes one of the most compelling cases for federal courts to refuse to abstain on *Younger* grounds. ERISA pre-emption is a class of "field pre-emption" which has been categorized as "super-pre-emption," displacing virtually all state laws from the field of employee benefit plans, even state laws which are fully consonant with ERISA. Congress has coupled ERISA's expansive pre-emption with a grant to the federal courts of exclusive jurisdiction over equitable suits to enjoin violations of ERISA or to enforce its provisions, which, in effect, is a manifestation of Congress' intention to have pre-emption claims resolved by the federal courts rather than the state courts.

The Court of Appeals in this case erroneously held that abstention is mandated under *Younger* unless a party can show that "it would be injured by having to raise its pre-emption defense in the state proceedings rather than in the federal district court." (*App., infra,* 20a). This is not a standard applied by other Courts of Appeals, which have held *Younger* abstention to be improper in certain circumstances; even though the conditions for this type of abstention are present.

In *Olde Discount Corporation v. Tupman,* 1 F.3d 202 (3rd Cir. 1993), *cert. denied,* ____ U.S. ____, 114 S.Ct. 741 (1994), the Court of Appeals for the Third Circuit held that the federal interest in promoting arbitration in commercial disputes under the Federal Arbitration Act outweighed a state's interest in having a dispute over the fraudulent sale of securities resolved in the state's tribunal. The Third Circuit stressed the overall importance of arbitration as a vital federal interest which was superior to the countervailing state interest. In two cases decided before this Court's decision in *NOPSI, supra,* 491 U.S. 350 (1989), the Courts of Appeals for the Second and Ninth Circuits had held that *Younger* abstention is inappropriate in an ERISA context.

Champion International Corporation v. Brown, 731 F.2d 1406, 1408-1409 (9th Cir. 1984); *Stone & Webster Engineering Corporation v. Ilsley,* 690 F.2d 323, 326, n.2 (2nd Cir. 1982), *judgment affirmed without opinion sub nom, Arcudi v. Stone & Webster Engineering Corporation,* 463 U.S. 1220 (1983). Thus, without the necessity of having to show "injury" as required by the Court of Appeals in the instant case, courts have recognized that there are cases in which the federal interest is so predominant that the state interest, even the state interest in preventing interference with its judicial proceedings, must yield in every respect to the paramount federal interest. In such cases, abstention by the federal courts is totally improper even if the three conditions for *Younger* abstention are formally present.

The instant case, thus, affords this Court an opportunity to expand upon its decision in *NOPSI, supra,* 491 U.S. 350 (1989) and provide guidance to the federal courts on the propriety of *Younger* abstention when "the importance of the generic proceedings to the State" (491 U.S. at 365) is manifestly outweighed by the importance of the "generic proceedings" to the federal government.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinions of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

ALLAN J. GRAF
Counsel of Record

FARMER & RIDLEY
444 South Flower Street
Suite 2300
Los Angeles, CA 90071-3033
(213) 626-0291
Counsel for Petitioners

Of Counsel:
ROBERT W. RIDLEY
444 SOUTH FLOWER STREET
SUITE 2300
LOS ANGELES, CA 90071-3033
(213) 626-0291

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APPENDIX A

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APPENDIX A.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

(Argued July 13, 1995
Decided September 19, 1995)

Docket No. 94-2611

EMPLOYERS RESOURCE MANAGEMENT COMPANY, INCORPORATED; AMERICAN EMPLOYERS BENEFIT TRUST,

Plaintiffs-Appellants,

v.

PRESTON C. SHANNON, Commissioner; THEODORE V. MORRISON, JR., Commissioner; H.W. MOORE, Commissioner; STEVEN T. FOSTER, Commissioner of Insurance,

Defendants-Appellees.

Before ERVIN, Chief Judge, MURNAGHAN, Circuit Judge, and PHILLIPS, Senior Circuit Judge.

Affirmed by published opinion. Chief Judge ERVIN wrote the opinion, in which Judge MURNAGHAN and Senior Judge PHILLIPS joined.

OPINION

ERVIN, Chief Judge:

This case arises from an attempt by the State Corporation Commission of the Commonwealth of Virginia ("SCC" or "Commission") to apply state insurance licensing laws to employee welfare benefit plans established and maintained

by Employers Resource Management ("ERM"). Both the Commission and ERM agree that the applicability of Virginia law turns on whether ERM's benefit plans are properly characterized as Multiple Employer Welfare Arrangements — most commonly referred to as MEWAs. In this appeal, we must resolve whether an ongoing, quasi-judicial proceeding before the Commission or federal district court is the proper forum for determining ERM's MEWA designation. For the reasons discussed below, we conclude that both the Anti-Injunction Act and the *Younger* abstention doctrine preclude us from enjoining the pending proceeding before the Commission. Consequently, the district court's decision to deny injunctive relief is affirmed.

I.

Although we are not addressing the substantive question of whether ERM maintains a MEWA for purposes of regulation under Virginia's insurance laws, we begin by explaining briefly the company's function. ERM provides co-employment services to its client employers — designating itself on employees' W-2 forms as the employer, paying employee wages, and providing all employee benefits. In addition to these responsibilities, ERM conducts periodic safety inspections and ensures that occupational, health, and safety regulations are followed at all times. The primary employer is relegated, in effect, to the status of an on-site director of day-to-day operations. Nationwide, ERM has 1,200 co-employer clients who, in turn, employ 5,500 workers. The companies with which ERM works appear to be small operations that find it cost-efficient to delegate administrative tasks to a larger company.

Most relevant for purposes of this litigation, ERM serves as the fiduciary of employee welfare benefit plans that it establishes for the employees of its client co-employers. ERM finances the plans through fees paid by the co-

employers and through optional employee contributions. The plans are fairly comprehensive, including hospital and medical benefits, dental benefits, and death benefits. ERM created the American Employers Benefit Trust, the other named plaintiff in this case, to hold all assets of the plans over which ERM exerts control.[1] ERM served as plan administrator and as fiduciary of the plans in accordance with § 3(21)(A) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* ("ERISA").

As the body charged with the regulation of the business of insurance in the Commonwealth of Virginia, the SCC maintains subject matter jurisdiction over persons offering or providing coverage in the Commonwealth for health care services. VA.CODE ANN. § 38.2-3420 (Michie 1994). Pursuant to its authority under section 38.2-233 of the Virginia Code, the Commission developed specific regulations to govern the operation of all MEWAs. Employers found to be operating MEWAs are held accountable to the dictates of the Commonwealth's insurance laws. Believing that ERM was operating a MEWA without a license, the Commission initiated a state proceeding against the company on February 18, 1994. In response to the initiation of proceedings, ERM filed two suits in federal court. The first sought removal of the state proceeding to federal court under 28 U.S.C. § 1441(b), and the second requested injunctive and declaratory relief in the hopes of barring the Commission from subjecting ERM to regulation under Virginia's insurance laws. ERM argued that equitable relief

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[1]Concentrating further on the substantive issue of whether ERM maintains a MEWA would shift our focus away from the issues that are the heart of this appeal. Although ERM properly avoided the "ultimate" question of its ERISA status in its initial brief, the company dedicated a substantial portion of its reply brief trying to convince us that it should not be categorized as maintaining a MEWA. Those arguments have fallen on deaf ears, since our only task is to decide the forum in which that issue ultimately will be settled.

was appropriate because the company was simply acting in its capacity as a single employer in maintaining an employee welfare benefit plan for its employees. Because it was not operating a *multiple* employer welfare arrangement, ERM claimed that it should not be subject to the dictates of the Commission or Virginia law.

Without deciding the merits of the case, the district court remanded ERM's removal action the Commission[2] and denied ERM's claim for equitable relief. The district court found that the requests for injunctive and declaratory relief were barred under the Anti-Injunction Act and the *Younger* abstention doctrine. ERM filed a timely notice of appeal from that decision.[3]

II.

The fact that questions arising under ERISA are federal in nature is not enough to circumvent the dictates of the Anti-Injunction Act or the *Younger* abstention doctrine — the bases relied upon by the district court for denying ERM's request for injunctive and declaratory relief. For the following reasons, we join the Third and Fifth Circuits in holding that § 1132(a) of ERISA does not operate as an automatic exception to the Anti-Injunction Act. We also find that it was within the sound discretion of the district

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[2]Because 28 U.S.C. § 1447(d) precludes an appeal of the district court's decision to remand the first case brought by ERM, the present appeal only concerns the district court's dismissal of the claim for equitable relief. *See* 28 U.S.C. § 1447(d) ("An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise [unless removal of a civil rights case was sought under section 1443].").

[3]We note that appellate jurisdiction is proper under both 28 U.S.C. § 1291 (appeal from a final order issued by the district court) and 28 U.S.C. § 1292(a)(1) (appeal from an order rejecting a claim for injunctive relief).

court to abstain under *Younger*, rather than to carve out an exception to the *Younger* abstention doctrine.

A.

ERM will be entitled to injunctive relief only if we conclude that enjoining the SCC proceeding is permissible despite the dictates of the Anti-Injunction Act, 28 U.S.C. § 2283, which "generally bars federal courts from granting injunctions to stay proceedings in state courts."[4] *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 142, 108 S.Ct. 1684, 1687, 100 L.Ed.2d 127 (1988). Intended as a limitation on the ability of federal courts to interfere with the state judicial system, the Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283.

We take seriously the mandate in the Anti-Injunction Act and recognize that for over two hundred years, the Act has helped to define our nation's system of federalism. *See Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 505 (5th Cir.1988) (referring to the Anti-Injunction Act as a "pillar of federalism reflecting the fundamental constitutional independence of the states and their courts"). As the Supreme Court observed in *Chick Kam Choo*, the Act serves as a "necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts." 486 U.S. at 146, 108 S.Ct. at 1689. "[T]he consistent understanding has been that its [the Act's] basic purpose is to prevent 'needless

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[4]ERM agrees that the proceeding before the SCC qualifies as a state judicial proceeding for purposes of the Anti-Injunction Act.

friction between state and federal courts.'" *Mitchum v. Foster*, 407 U.S. 225, 232-33, 92 S.Ct. 2151, 2156-57, 32 L.Ed.2d 705 (1972) (quoting *Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co.*, 309 U.S. 4, 9, 60 S.Ct. 215, 218, 84 L.Ed. 537 (1940)). Any discussion of federalism will, by its very nature, involve a balancing of federal and state interests, and the Anti-Injunction Act plays a critical role in ensuring that the proper balance is maintained.

Notwithstanding the Act's basic purpose of preserving the integrity of state judicial systems, Congress defined three instances in which injunctions are permitted and it now is settled that the Act is "an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of [those] three specifically defined exceptions." *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286, 90 S.Ct. 1739, 1743, 26 L.Ed.2d 234 (1970). Injunctions, therefore, are permitted when they are expressly authorized by statute, necessary to aid the court's jurisdiction, or required to protect or effectuate the court's judgment "to ensure the effectiveness and supremacy of federal law." *Chick Kam Choo*, 486 U.S. at 146, 108 S.Ct. at 1689. The exceptions are construed narrowly, however, and are "not [to] be enlarged by loose statutory construction." *Atlantic Coast Line*, 398 U.S. at 287, 90 S.Ct. at 1743; *Amalgamated Clothing Workers v. Richman Brothers* 348 U.S. 511, 514, 75 S.Ct. 452, 454, 99 L.Ed. 600 (1955) (noting that § 2283's prohibition "is not to be whittled away by judicial improvisation"). Unlike *Chick Kam Choo*, in which only the Anti-Injunction Act's third exception was "even arguably applicable," 486 U.S. at 146, 108 S.Ct. at 1689, our analysis of the Act turns primarily on the applicability of its first exception.

The Anti-Injunction Act's "expressly authorized" exception is not triggered simply by the fact that a state proceeding involves a question of federal law. "Rather, when a state

proceeding presents a federal issue, even a pre-emption issue, the proper course is to seek resolution of that issue by the state court." *Chick Kam Choo*, 486 U.S. at 149-50, 108 S.Ct. at 1691. The circuits are in agreement that the existence of preemption does not control application of the Anti-Injunction Act. *See, e.g., National R.R. Passenger Corp. v. Florida*, 929 F.2d 1532, 1535 (11th Cir.1991); *Total Plan Services, Inc. v. Texas Retailers Ass'n, Inc.*, 925 F.2d 142 (5th Cir.1991); *U.S. Steel Corp. Plan for Employee Ins. Benefits v. Musisko*, 885 F.2d 1170 (3rd Cir.1989), *cert. denied*, 493 U.S. 1074, 110 S.Ct. 1121, 107 L.Ed.2d 1028 (1990). In the ERISA context, in particular, it has been noted that the applicability of the Anti-Injunction Act's exceptions, and not the fact that ERISA preempts state-law claims brought by employees against employee benefit plans, is the basis on which the injunction issue is to be resolved.[5] *See, e.g., 1975 Salaried Retirement Plan v. Nobers,* 968 F.2d 401, 408-10 (3rd Cir. 1992) (holding that injunction against prosecution of state court contract action brought by laid off employees against employer did not come within exception in the Anti-Injunction Act as "expressly authorized by Act of Congress" simply

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[5]We recognize that there is compelling evidence supporting the proposition that Congress intended for ERISA to preempt state law. Section 514(a) of ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 91, 103 S.Ct. 2890, 2897, 77 L.Ed.2d 490 (1983) (citing 29 U.S.C. § 1144(a)). This rather straightforward provision is flushed out further throughout the legislative history. *See* 120 Cong. Rec. 29197 (1974) (statement of Rep. Dent) (claiming that the "crowning achievement" of the legislation was the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans"); *id.* at 29933 (statement of Sen. Williams) ("[W]ith the narrow exceptions specified in the bill, the . . . provisions . . . are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.").

because the state-court claims were preempted by ERISA, even if the state court claims were subject to exclusive federal jurisdiction), *cert. denied,* ____ U.S. ____, 113 S.Ct. 1066, 122 L.Ed.2d 370 (1993).

In arguing that ERISA qualifies as an express exception to the Anti-Injunction Act, ERM overstates the relevance of the Supreme Court's decision in *Mitchum v. Foster.* While we recognize that a federal law need not contain an express reference to the Anti-Injunction Act in order to qualify under the "expressly authorized" exception, *id.* at 237, 92 S.Ct. at 2159, in order to justify the grant of injunctive relief, it is necessary to demonstrate that the federal scheme in question has created "a specific and uniquely federal right or remedy, enforceable in a federal court of equity, *that could be frustrated if the federal court were not empowered to enjoin a state court proceeding," Mitchum,* 407 U.S. at 237, 92 S.Ct. at 2159 (emphasis added). In *Mitchum,* the Court found that 42 U.S.C. § 1983 entails such a scenario. It does not necessarily follow from the *Mitchum* ruling, however, that the same result is compelled in the ERISA context.

While we appreciate that Congress intended for ERISA to operate primarily in the federal sphere, we do not believe that ERISA created the type of "unique" federal right or remedy that was at issue in *Mitchum*'s consideration of 42 U.S.C. § 1983. As the *Mitchum* Court acknowledged, an entirely new structure of law emerged in the post-Civil War era, and § 1983, in particular, "opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation." *Mitchum,* 407 U.S. at 239, 92 S.Ct. at 2160. Section 1983 provides the quintessential example of a congressional act designed to displace state law. At its heart, § 1983 is meant to provide citizens with relief in those cases in which their

rights have been violated under color of state law. It would make no sense to prohibit federal courts from enjoining ongoing state proceedings if the entire purpose of the congressional enactment was to protect individuals from state action. *Id.* at 240, 92 S.Ct. at 2161; *see also id.* at 242, 92 S.Ct. at 2162 ("The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights.").

The ERISA statutory scheme is not sufficiently analogous to the scheme developed under § 1983 for us to extend *Mitchum* into the ERISA setting. Although ERISA was designed to unify the nation's laws regarding employee welfare benefits, there was never a sense that Congress enacted ERISA because "state courts were being used to harass and injure individuals." *Id.* at 240, 92 S.Ct. at 2161. That, however, was precisely the reason Congress enacted § 1983. *Id.* at 242, 92 S.Ct. at 2162. Section 1983 was passed in response to a perceived failure of the state system. *See id.* at 242, 92 S.Ct. at 2162 (noting that the "legislative history makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created [civil] rights"); *cf. Pennsylvania v. Union Gas,* 491 U.S. 1, 41-42, 109 S.Ct. 2273, 2302-03, 105 L.Ed.2d 1 (1989) (Scalia, J. concurring) (noting that the Civil Rights Act of 1871 was intended to be a "limitation[ ] of the power of the States and enlargement[ ] of the power of Congress"). ERM makes no claim that ERISA was enacted for similar reasons. A distrust of state courts did not play the same role in the development of ERISA as it did in the formation of § 1983. *See 1975 Salaries Retirement Plan,* 968 F.2d at 410 (pointing out that "Congress had no overarching distrust that state courts would disregard ERISA, unlike Congress's concerns about state court violations of section 1983").

Other circuits are divided on the issue of whether ERISA carves an exception into the Anti-Injunction Act that enables federal courts to enjoin state proceedings when a party raises a question of federal law under ERISA. *Compare Gilbert v. Burlington Industries, Inc.*, 765 F.2d 320 (2d Cir.1985) (finding that § 1132(a) of ERISA constitutes an exception to the Anti-Injunction Act and affirming district court's grant of injunction of state court proceeding); *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir.1980) (same) *with Total Plan Services*, 925 F.2d 142 (finding no ERISA exception and affirming district court's denial of injunctive relief); *Musisko*, 885 F.2d 1170 (same). The "circuit split" that allegedly exists between the Third and Fifth Circuits, on the one hand, and the Second and Sixth Circuits, on the other, is far less troubling once the particular cases are examined. We join the Third and Fifth Circuits in rejecting the notion that ERISA operates as an automatic exception to the Anti-Injunction Act.

In *General Motors Corp. v. Buha*, the district court had enjoined a state court judge from enforcing a writ of garnishment. The defendant, Buha, had obtained previously a state court judgment against Walter Kinsky in a tort action. *Buha*, 623 F.2d at 457. Kinsky did not pay the judgment, and Buha instituted post-judgment garnishment procedures. A writ of garnishment was served on a bank that was serving as trustee for a General Motors pension plan. The bank denied liability as the trustee of the pension fund, and Buha demanded an examination of the bank. *Id.* GM filed an action in federal district court, requesting that the court restrain enforcement of the writ.

On appeal, the Sixth Circuit evaluated the propriety of the district court's decision to enjoin the state court proceedings. The appellate court relied exclusively on the Supreme Court's *Mitchum* decision, without ever acknowledging the diferences between § 1983 — the congressional scheme at

issue in *Mitchum* — and ERISA — the Act under consideration in *Buha*. The central question for the *Buha* court was whether ERISA "could be given its intended scope only by the stay of a state court proceeding." *Buha*, 623 F.2d at 458 (quoting *Mitchum*, 407 U.S. at 238, 92 S.Ct. at 2160). In answering that question in the affirmative, the *Buha* court focused on the fact that ERISA had been enacted to provide a uniform framework for the regulation of employees' benefit plans. *Id.* at 459 (quoting 120 Cong.Rec. 29197 (1974) (statement of Rep. Dent).

It does not follow, however, as the *Buha* court implies, that *every* discrepancy touching on ERISA requires federal courts to enjoin ongoing state proceedings in order for ERISA to be given its intended scope. In fact, *Buha's* holding may be read in a far more limited fashion than ERM has suggested. The court simply held:

> When a district court finds that an action in a state court will have the effect of *making it impossible for a fiduciary of a pension plan to carry out its responsibilities under ERISA*, the anti-injunction provisions of § 2283 do not prohibit it from enjoining the state court proceedings.

Buha, 623 F.2d at 459 (emphasis added). Had *Buha* not enjoined the state proceedings, the trustee of the General Motors pension plan, along with GM itself, might have been unable to carry out its responsibilities under ERISA. The present case, on the other hand, does not present a scenario in which someone claims they are owed funds from a pension plan. ERM has never suggested that it will be unable "to carry out its responsibilities under ERISA" if it is subjected to Virginia insurance law. ERM is not in the same position as General Motors was in *Buha*. We do not find that affirming the district court's decision in this case would run counter to the dictates of *Buha*.

Like *Buha*, *Gilbert v. Burlington Industries, Inc.*, is a case in which an ERISA plan fiduciary faced the possibility of not being able to fulfill its ERISA responsibilities if forced to resolve a dispute in state court. Thirty-six former employees of Burlington Industries sued the company, claiming that severance pay was owed upon their termination of employment. The Second Circuit, after spending most of its time determining whether a severance pay policy constitutes an employee welfare benefit plan under ERISA, *Gilbert*, 765 F.2d at 324-26, dispensed with the issue of whether the district court had acted improperly in enjoining the state administrative proceeding in only one paragraph. *Id.* at 329. The court merely asserted, without any analysis to support its claim, that "the injunction falls within the [Anti-Injunction] Act's exception for actions 'expressly authorized' by federal law." *Id.*

We find that *Gilbert*, like *Buha*, does not provide us with a sufficiently compelling reason to circumvent the Anti-Injunction Act. As was the case in *Buha*, the *Gilbert* court simply assumed that ERISA should be treated in the same manner as § 1983 had been treated by the Supreme Court in *Mitchum*. In order to escape the rather strict provisions of the Anti-Injunction Act, there must be some basis — beyond the desire to create a uniform federal system of law — to justify the complete exclusion of state courts from the process. *Gilbert* never offers that type of analysis. Furthermore, it made more sense in *Gilbert* than in the present case to enjoin state proceedings, because the ERISA fiduciary was facing an action brought by plan participants. As we noted in the context of our discussion of *Buha*, ERM has not explained the ways in which its adherence to ERISA may be jeopardized by allowing the SCC to continue with its proceeding.

Although the arguments set forth by the Second and Sixth Circuits are unpersuasive, we find the decisions of the

Third and Fifth Circuits to be instructive. Unlike *Buha* and *Gilbert*, which applied a blanket policy that all ERISA actions brought in state courts must, by necessity, be enjoined, the Fifth Circuit's decision in *Total Plan Services, Inc. v. Texas Retailers Assn., Inc.*, 925 F.2d 142 (5th Cir.1991), rejected the idea that ERISA's federal nature completely shuts off access to state courts. *Id.* at 144. Relying on the Supreme Court's decision in *Chick Kam Choo*, the *Total Plan Services* court placed great weight on the fact that the statutory exceptions to the Anti-Injunction Act "are narrow and are 'not [to] be enlarged by loose statutory construction.'" 925 F.2d at 144 (quoting *Chick Kam Choo*, 486 U.S. at 146, 108 S.Ct. at 1689). The Fifth Circuit went beyond simply noting that Anti-Injunction Act exceptions are rarely applicable and added that "'any doubts are to be resolved in favor of allowing the state court action to proceed.'" 925 F.2d at 144 (quoting *Texas Employers' Insurance Ass'n v. Jackson*, 862 F.2d 491, 499 (5th Cir.1988) (en banc), *cert. denied*, 490 U.S. 1035, 109 S.Ct. 1932, 104 L.Ed2d 404 (1989)). According to *Total Plan Services*, such principles apply when the state proceedings "interfere with a protected federal right or invade an area pre-empted by federal law, *even when the interference is unmistakably clear." Id.* (quoting *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 287, 90 S.Ct. 1739, 1743, 26 L.Ed2d 234 (1970)). Even § 1132 of ERISA, which appears to create an exception to the Anti-Injunction Act, could not be read as making the mere filing of a state court proceeding a violation of ERISA. *Id. "[S]imply because an area of law is federal, the proper forum to make that determination is not necessarily federal as well." Id.* at 145 (emphasis added).

In *Total Plan Services*, the Fifth Circuit relied heavily on similar analysis that had been provided two years earlier by the Third Circuit in *U.S. Steel Corp. Plan for Emp. Ins. v. Musisko*, 885 F.2d 1170 (3d Cir.1989). In that case, the

Third Circuit rejected the plaintiffs' attempt to broaden the three narrow exceptions to the Anti-Injunction Act. The *Musisko* court observed that "[c]onspicuously absent from the language of this ERISA injunction provision is any suggestion of its use by federal courts against state tribunals." *Id.* at 1177. *Musisko* laid out the case against granting injunctive relief and for preserving the integrity of the state system:

> A federal court may not enjoin state court proceedings merely because they "invade an area pre-empted by federal law even when the interference is unmistakably clear," *Chick Kam Choo*, 486 U.S. at [149], 108 S.Ct. at 1691, or where the "incursion upon a federally pre-empted domain dislocates the federal scheme as a whole," *Richman Bros.*, 348 U.S. at 517, 75 S.Ct. at 456. The fact that the state proceeding presents a preemption issue does not alter the respect due the state tribunal. "*[T]he proper course is to seek resolution of that issue by the state court.*" *Chick Kam Choo*, 486 U.S. at [150], 108 S.Ct. at 1691.

885 F.2d at 1177-78; *accord 1975 Salaried Retirement Plan*, 968 F.2d at 408-10.

We conclude that the sounder position is the one adopted in the Third and Fifth Circuits — i.e., the Anti-Injunction Act allows for only limited exceptions to its general rule of not enjoining state proceedings and the mere fact that ERISA is rooted in federal law does not preclude a state court from operating as the forum in which federal law is to be considered. As the Fifth Circuit observed in *Total Plan Services:*

> Although plaintiffs present good arguments that the proper tribunal for an ERISA fiduciary action is a federal court, the appropriate authority to decide the scope of the ERISA preemption issue in *this* case is the

> state court, where the action initially was filed and where this issue initially was presented and ruled upon. As the Supreme Court has stated, we should not be swayed by any "assumption . . . that federal rights will not be adequately protected in the state courts." *Amalgamated Clothing Workers*, 348 U.S. at 517, 75 S.Ct. at 456.

925 F.2d at 146. Like the Fifth Circuit, we resolve all doubts "in favor of allowing the state court action to proceed." *Texas Employers' Insurance Ass'n*, 862 F.2d at 499. Recognizing the preemption of state law and respecting the dictates of the Anti-Injunction Act are not mutually exclusive. Unwilling to construe broadly the Anti-Injunction Act's limited exceptions, we affirm the district court's denial of injunctive and declaratory relief.

B.

Our review of *Younger* abstention principles is far more limited than the review we undertook in the Anti-Injunction Act setting. This court reviews a district court's decision to abstain only for an abuse of discretion. *Martin Marietta v. Maryland Comm'n on Human Rel.*, 38 F.3d 1392, 1396 (4th Cir.1994); *Richmond, Fredericksburg & Potomac R. Co. v. Forst*, 4 F.3d 244, 250 (4th Cir.1993).

Unlike our discussion of the Anti-Injunction Act, in which we noted that enjoining state proceedings is generally to be avoided, our consideration of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), begins with the basic proposition that "abstention from the exercise of federal jurisdiction is the exception, not the rule." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236, 104 S.Ct. 2321, 2326-27, 81 L.Ed.2d 186 (1984); *Pomponio v. Fauquier County Bd. of Sup'rs*, 21 F.3d 1319, 1324 (4th Cir.1994); *see also Forst*, 4 F.3d at 251 (noting that the "obligation to hear cases properly before the district court is

'virtually unflagging' ") (quoting *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 1246, 47 L.Ed.2d 483 (1976)). Put simply, the doctrine of abstention is "an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188, 79 S.Ct. 1060, 1063, 3 L.Ed.2d 1163 (1959). While the Anti-Injunction Act is designed to affirm the legitimacy of the state forum, the limited nature of the *Younger* abstention doctrine reinforces the preeminence of the federal system in certain areas of law.

Younger abstention is appropriate only in those cases in which (1) there is an ongoing state judicial proceeding, (2) the proceeding implicates important state interests, and (3) there is an adequate opportunity to present the federal claims in the state proceeding.[7] *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982). Abstention will not be required unless the "state court proceedings [have been] initiated 'before any proceedings of substance on the merits have taken place in the federal court.' " *Hawaii Housing Authority*, 467 U.S. at 238, 104 S.Ct. at 2328 (quoting *Hicks v. Miranda*, 422 U.S. 332, 349, 95 S.Ct. 2281, 2292, 45 L.Ed.2d 223 (1975)). Here, the Commission proceeding began two weeks before ERM filed its claims in federal court. For that matter, ERM concedes that all three elements of *Younger* have been met in this case.

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[7]We note that although *Younger* involved criminal proceedings, the Supreme Court has since extended abstention principles into noncriminal judicial proceedings, *see, e.g., Huffman v. Pursue, Ltd.*, 420 U.S. 592, 603-04, 95 S.Ct. 1200, 1207-08, 43 L.Ed.2d 482 (1975), and into state administrative proceedings that are judicial in nature. *See, e.g., Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718, 2722-23, 91 L.Ed.2d 512 (1986).

ERM asks us to consider, however, whether a set of extraordinary circumstances exist in this case that would warrant a circumvention of the *Younger* abstention doctrine so that the substantive issue of whether ERM is operating a MEWA can be resolved in federal court. The Supreme Court has recognized that in "extraordinary circumstances," the federal courts may disregard the "strong federal policy against federal-court interference with pending state judicial proceedings." *Middlesex County Ethics Committee,* 457 U.S. at 431, 102 S.Ct. at 2521. While no discretion exists to grant injunctive relief when a case is properly within the *Younger* category of cases, *Colorado River,* 424 U.S. at 816 n. 22, 96 S.Ct. at 1246 n. 22, such discretion can be exercised when extraordinary circumstances exist. We recognized as much in *Forst,* when we noted that "[a]bstention is not necessarily appropriate in every civil action that meets the formal requirements of the *Younger* doctrine." *Forst,* 4 F.3d at 251 (citing *New Orleans Pub. Serv., Inc. v. Council of New Orleans,* 491 U.S. 350, 368, 109 S.Ct. 2506, 2518, 105 L.Ed.2d 298 (1989) ("*NOPSI*")). In effect, the *Younger* abstention doctrine, which is an exception itself, comes with its own exception.

ERM relies heavily on *Forst,* because it is an instance in which this court explicitly carved out an exception to *Younger* abstention. In *Forst,* we concluded that Congress had created "a clear exception to the principles of comity that underlie *Younger* abstention," *Forst,* 4 F.3d at 251, in section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"). ERM asks that we reach the same conclusion with respect to ERISA that *Forst* reached with respect to the 4-R Act. The *Forst* court held:

> In the narrow context of state taxation of railroad property, Congress has determined that the principles of comity that underlie the Tax Injunction Act — the principles that also underlie Younger abstention —

> simply do not apply. Section 306 defines an entire category of cases in which "extraordinary circumstances" exist to justify federal court intervention in state taxation matters. Consequently, the district court abused its discretion by abstaining under *Younger*.

Id. at 252. It was not simply that the parties' dispute arose under federal law, but also that Congress had determined that "railroads were entitled to adjudicate their disputes with state taxing authorities in federal court." *Id.* at 254. There was no concern on our part with the competence of the state courts to decide issues of federal law. *Id.* at 251. Instead, we were guided by the fact that Congress had passed section 306 of the 4-R Act as an explicit exception to the Tax Injunction Act. Congress' preference for a federal forum was rooted in "[t]he history of state discrimination against railroads — including the railroads' experience in the state courts." *Id.* at 252. That history convinced Congress to "restore the power of the federal courts to enjoin discriminatory state taxation of railroads." *Id.*

Unlike the *Forst* court, which chose not to adhere to *Younger* abstention principles based on a clearly articulated congressional desire to have issues under the 4-R Act litigated in federal court, our decision in *Martin Marietta* affirmed the district court's holding that *Younger* abstention was applicable and that the state administrative proceeding regarding an employee's discrimination claim should continue. 38 F.3d at 1395. The question at the heart of the *Martin Marietta* litigation was the same one posed in *Forst* — whether particular acts of Congress create the type of extraordinary circumstances that justify the circumvention of *Younger* abstention.[8] *Id.* at 1396. In *Martin Marietta*, we

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[8]In *Martin Marietta*, our attention focused on section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) (1988), and the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et. seq.*

determined that neither of the two acts in question pre-empted the Maryland Commission on Human Relations' jurisdiction over the claims brought by a former Martin Marietta employee. *Younger* abstention did not apply. Our decision stood in contrast to our holding in *Forst*, in which we acknowledged that Congress had a "clear[] concern[] that the states were not providing an 'adequate' opportunity for railroads to remedy discriminatory taxation." *Forst*, 4 F.3d at 252. No similar shortcoming on the part of the state system existed in *Martin Marietta* so as to trigger concerns about "the abilities of state courts to provide adequate remedies for federal rights." *Forst*, 4 F.3d at 252.

The *Martin Marietta* court reaffirmed *Younger's* "strong policy against federal court interference with any pending state judicial proceeding unless extraordinary circumstances so warrant." 38 F.3d at 1396. That an issue of federal law is before a state court or administrative agency does not, in and of itself, suggest that a federal court must seize the matter for its own consideration. *See id.* (recognizing that, for purposes of *Younger*, "state courts are fully competent to decide issues of federal constitutional law"). We observed that under the Supreme Court's decision in *NOPSI*, substantial claims of preemption do not automatically preclude abstention. *Id.* (citing *NOPSI*, 491 U.S. at 365, 109 S.Ct. at 2516-17).

Even though we ultimately agree with the SCC that it was proper for the district court, with *Younger* abstention in mind, to remove itself from this controversy, we recognize that the federal-state balance, which *Younger* abstention is designed to maintain, has been skewed sharply in favor of the federal system in the ERISA context. Congress has shown clearly its interest in uniform regulation of pension plans and its intention "to establish pension plan regulation as exclusively a federal concern." *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523, 101 S.Ct. 1895, 1906, 68

L.Ed.2d 402 (1981). It enacted broad preemption provisions to save employers from conflicting and inconsistent state and local regulation of employee benefit plans. *See Shaw*, 463 U.S. at 90-91, 103 S.Ct. at 2896-97. We find that Congress has made it as clear under ERISA as it has under the 4-R Act that federal interests outweigh competing state interests.

The problem for ERM is that it has not shown, as the railroad company in *Forst* did, how it would be injured by having to raise its preemption defense in the state proceedings rather than in federal district court. ERM perceives that the Commission is more likely than a federal district court to label ERM's pension plans as MEWAs, thus leaving ERM subject to Virginia's insurance laws. The fact that ERM would prefer a federal forum is not a serious enough interest to rise to the level of an exception to *Younger* abstention. In *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), the Supreme Court recognized that federal court intervention is allowed in those cases

> where the District Court properly finds that the state proceeding is motivated by a desire to harass or is conducted in bad faith, or where the challenged statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it.

Id. at 611, 95 S.Ct. at 1212. ERM has not provided us with any reason to believe that the Commission is either incapable of reviewing ERM's claim of preemption under ERISA or that the Commission is somehow less trustworthy than its federal counterpart. We refuse to create an exception to *Younger* abstention based on ERM's mere assertion of an ERISA preemption challenge. Thus, the district court did not abuse its discretion in abstaining under *Younger*.

III.

Our decision today is not intended to detract, in any way, from the uniquely federal nature of ERISA. Rather, we recognize that "simply because an area of law is federal, the proper forum to make that determination is not necessarily federal as well." *Total Plan Services,* 925 F.2d at 145. Although "superficially compelling," *id.,* we reject the argument that the preeminence of federal law somehow precludes consideration of federal law in the context of a state administrative proceeding. We recognize that even when presented with a question such as ERM's MEWA classification — which ultimately must be determined by examining federal law — we have an equally compelling responsibility to preserve the integrity of the competing state system. Upon close examination, we do not find that ERISA operates as an automatic exception to the Anti-Injunction Act, nor do we find that this case presents us with the type of extraordinary circumstances that would justify ignoring principles of *Younger* abstention. Accordingly, the judgment of the district court is

AFFIRMED.

APPENDIX B

APPENDIX B.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

EMPLOYERS RESOURCE MANAGEMENT COMPANY, et al.,
Plaintiffs,

v.

PRESTON C. SHANNON, et al.,
Defendants.

Civ. A. No. 3:94cv148

COMMONWEALTH OF VIRGINIA,
Plaintiff,

v.

EMPLOYERS RESOURCE MANAGEMENT CO., et al.,
Defendants.

Civ. A. No. 3:94cv157

MEMORANDUM OPINION

PAYNE, District Judge.

On March 3 and 4, 1994, Employers Resource Management Co. ("ERM") initiated two actions in this court. The first action ("Case I"), in which ERM and American Employers Benefit Trust ("the Trust") are plaintiffs, prays for a declaration that ERISA preempts the application of Virginia state law regulating multiple employer welfare arrangements ("MEWAs") and for an injunction precluding state officials from proceeding with an action to enforce state law in the Virginia State Corporation Commission ("SCC"). Defendants, state officials, move the court to dismiss, stay, or abstain from adjudicating the case, and they move for judgment on the pleadings.

The second action ("Case II") came to this court upon removal by ERM and the Trust of pending state proceedings in the SCC that were begun by the Commonwealth of Virginia on February 18, 1994. The Commonwealth moves to remand this action. The ultimate question in both actions — the question that either a state court or this court must eventually decide — is whether ERM and the Trust are part of a MEWA such that ERISA does not preempt state regulation. *See* 29 U.S.C. § 1144(b)(6).

This court does not reach that ultimate question, however. Case II, as initiated by the Commonwealth, does not "arise under" federal law for purposes of 28 U.S.C. § 1331, which outlines the parameters of federal question jurisdiction. This conclusion, then, determines the result in Case I, as well, given both the Anti-Injunction Act, 28 U.S.C. § 2283, and the abstention principles set forth in *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and subsequent cases. Because the state proceedings were begun before ERM initiated Case I, the injunction and the declaratory judgment sought in Case I, which would operate to enjoin the state proceedings associated with Case II, are not within the power of this court to grant. Virginia's state judicial system is capable of dealing with the preemption defense that ERM has raised. For the reasons set forth below, both the Commonwealth's motion to remand Case II and the state officials' motion to dismiss Case I are granted.

BACKGROUND

A. Procedural Facts

The parties have stipulated to most of the important facts. For purposes of remanding the entire controversy, including the question of ERISA preemption, only the procedural facts are substantially relevant.

ERM's trouble with state agencies began on November 18, 1991 when the Bureau of Insurance ("the Bureau")

advised ERM that it might be operating in Virginia in violation of the SCC's rules governing MEWAs. ERM responded to the Bureau on January 2, 1992, arguing that ERISA preempted state regulation and representing that it stood prepared to file an action "in the appropriate forum" to enjoin the Commissioner of Insurance from enforcing state law. Stip., ¶ 15. A few days later, the Bureau countered by suggesting that the United States Department of Labor ("the DOL") could help resolve the dispute.

While maintaining that the Bureau had no jurisdiction and refusing to provide the Bureau with any documents, ERM did supply the DOL with requested documents. On May 28, 1992, ERM responded to an April 30 request by the DOL for information describing ERM's business, the current trust agreement of its employee welfare benefit plan, and an example of a contract between ERM and one of its client employers. After a formal request on June 23, 1992 by the Bureau for an opinion from the DOL, the DOL issued Advisory Opinion 93-29A(c), dated November 2, 1993, which found ERM was a MEWA subject to state regulation.

Next, on February 18, 1994, the Commission issued an Order to Take Notice informing ERM and the Trust that it would enter a cease and desist order after March 7, 1994 if ERM did not file a responsive pleading to object before that date. On March 3, ERM did respond. The next day, it removed that pending state proceeding to this court. Also on March 3, ERM filed a complaint in this court seeking an injunction and a declaratory judgment. Nothing of moment has occurred at the state level since March 3, when ERM filed its response to the Order to Take Notice.

B. State Law

Virginia specifies most of the judicial function of the SCC at Va.Code §§ 12.1-12, -13. These duties include "the duty

of administering the laws made for the regulation and control of corporations doing business" in Virginia. Chapter 5 of Title 12 details the procedure the SCC follows and the right of litigants to appeal its decisions. Specifically, § 12.1-39 provides that "any party aggrieved by any final . . . judgment of the Commission shall have, of right, an appeal to the Supreme Court irrespective of the amount involved." Moreover, no other state court may interfere with the Commission's proceedings. *Id.*

The substantive state law licensing requirements supporting the Commission's Order to Take Notice are found in certain rules governing MEWAs adopted by the Commission pursuant to Va.Code § 38.2-223. These rules define MEWAs and subject them to licensing requirements "as an insurance company, health maintenance organization, health services plan, or dental or optometric services plan pursuant to Title 38.2 of the Code of Virginia." *See* Commission's Rules Governing MEWAs § 5.A, *in* Commonwealth's Memorandum in Support of Motion to Remand, Ex. 2. A MEWA is defined in § 4 of those rules. The Commission's definition of MEWA tracks rather closely the definition of MEWA provided by ERISA at 29 U.S.C. § 1002(40)(A), which encompasses most arrangements that offer certain employee welfare benefits "to the employees of two or more employers." ERISA specifically provides that state regulation of such arrangements is not completely preempted. *See* 29 U.S.C. § 1144(b)(6)(A).

C. The Business of ERM

ERM's clients are employers. Each client and ERM are, in the language used by ERM, "co-employers" of the client's employees. When a new client enters an arrangement with ERM, its employees continue to work for the benefit of the client, which remains practically the sole overseer of the employees' work. ERM's primary role is to

perform certain administrative functions: paying employees' their wages, paying employer taxes, being responsible for state and local employee payments or withholdings from wages, and, not least of all, maintaining a plan to provide employees with certain medical and death benefits. It also administers an occupational and worker safety program that all of its clients must follow. There exist substantial disputes respecting whether ERM is an employer and what legal principles should govern the resolution of that dispute. It is, however, not necessary to decide those issues.

DISCUSSION

A. Remand of Case II

As a general proposition, Virginia, like every other state, by virtue of its police power, has the right to regulate businesses operating within its borders. This right is limited, however, by the United States Constitution, including the Supremacy Clause. When a party argues that a state, which has instituted a suit to enforce state regulation against the party, cannot enforce its regulation consistently with the Supremacy Clause, it raises a federal preemption defense to a state claim. The case arises, then, not under federal law, but under state law. And even where "both parties admit that the only question for decision is raised by a federal preemption defense," the well-pleaded complaint rule precludes the exercise of jurisdiction by federal courts. *See Franchise Tax Bd. v. Construction Laborers Vacation Trust,* 463 U.S. 1, 12, 14, 103 S.Ct. 2841, 2848, 2849, 77 L.Ed.2d 420 (1983); *Caterpillar Inc. v. Williams,* 482 U.S. 386, 393, 107 S.Ct. 2425, 2430, 96 L.Ed.2d 318 (1987) ("[I]t is now settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of preemption, even if the defense is anticipated in the plaintiff's complaint. . . .") (emphasis in original).

Franchise Tax Board is indeed very much on point. There, a state agency sued a welfare benefit trust in state court, demanding money from the trust to cover unpaid personal income tax. The state agency also sought a declaration that ERISA did not preempt state regulation. 463 U.S. at 5-7, 103 S.Ct. at 2844-45. The Court found the case could not be removed on the basis of ERISA preeemption, which related to both the tax levy and the declaratory judgment. *Id.* at 7, 103 S.Ct. at 2845. Using a "straightforward application" of the well-pleaded complaint rule, the Court disposed of the first cause of action, concerning the tax levy, rather simply. It explained,

> California law establishes a set of conditions, without reference to federal law, under which a tax levy may be enforced; federal law becomes relevant only by way of a defense to an obligation created entirely by state law, and then only if [plaintiff] has made out a valid claim for relief under state law.

Id. at 13, 103 S.Ct. at 2848. Likewise, ERM's argument concerning the federal definition of MEWA is a defense to attempted enforcement of state regulation. Thus, the court must remand the case as the United States Supreme Court dictated in *Franchise Tax Board.*

ERM suggests that a federal question is inherent in the Order to Take Notice, or complaint, because federal law controls the definition of a MEWA. While the federal definition is controlling with respect to the preemption defense, the state definition controls the complaint. If ERM does not fit within the definition of arrangements governed by the SCC's rules, then the SCC fails to make out "a valid claim for relief under state law." The federal definition, for this purpose, need not even be consulted. Even if the state and federal definitions were precisely the same, or if the state law specifically referred to the definition of MEWA given by ERISA, the result would remain unchanged. Any

state statute could read, "The following regulation is valid to the extent it is not preempted by federal law." But even in such a case, the reference to federal law would not give rise to federal question jurisdiction for cases brought alleging violations of the state statute.

ERM cites *North Davis Bank v. First Nat'l Bank of Layton,* 457 F.2d 820 (10th Cir.1972). There, the plaintiff sought, pursuant to a state law that described how and where a bank's branch offices could be established, to enjoin the defendant national bank's construction of a new facility. Federal law provided that a national bank could establish a branch only if the host state permitted its state banks to establish a branch in the same way, and it defined the term "branch." *Id.* at 821-22 & n. 3. Finding that federal law controlled the definition of what constituted a branch office for the defendant national bank, the Court of Appeals upheld federal court jurisdiction. *Id.* at 823. In the same way, ERM argues, federal law controls the definition of MEWA so that a federal question is raised by the SCC's complaint.

The persuasive value of *North Davis Bank* is lost, however, with the understanding that the court there sustained the exercise of jurisdiction because of a perceived distinction between a federal defense and a claim of preemption. Several subsequent decisions criticized *North Davis Bank*, found its distinction unconvincing, and held that preemption was a federal defense that would not support federal question jurisdiction. *See, e.g., Lawrence Co., S.D. v. State of S.D.*, 668 F.2d 27, 31 & n. 2 (8th Cir.1982); *Smart v. First Federal S & L Assoc.*, 500 F.Supp. 1147, 1154 (E.D.Mich.1980). Most importantly, of course, the Supreme Court of the United States, in *Franchise Tax Board* and *Caterpillar Inc.*, has since clarified the import of a preemption defense, as discussed above.

B. Dismissal of Case I

Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed2d 490 (1983), makes clear that a federal court generally has jurisdiction pursuant to 28 U.S.C. § 1331 over claims seeking an injunction against any application of state law allegedly preempted by federal law. *Id.* at 96 n. 14, 103 S.Ct. at 2899 n. 14. Other considerations enter the picture, however, when a state proceeding to enforce such state law begins before the injunction action in federal court. The basic controversy here having been remanded to the SCC in its judicial capacity, the court cannot interfere with these state proceedings, which began several days before any action in this court, by issuing an injunction or a declaratory judgment concerning issues that the SCC must decide. Both the Anti-Injunction Act and *Younger v. Harris* require this conclusion.

1. The Anti-Injunction Act

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress . . . " 28 U.S.C. § 2283 (the Anti-Injunction Act). The court finds that the injunction and declaratory judgment sought by ERM and the Trust would be "an injunction to stay proceedings in a State court"; it finds further that the ERISA provision at 29 U.S.C. § 1132(a)(3), which authorizes a fiduciary to bring an action "to enjoin any act or practice which violates any provision" of ERISA, is not an express authorization for injunctions of state proceedings as required by the first exception of the Anti-Injunction Act.

ERM seeks to have this court prevent state officials from enforcing state regulation and declare that the regulation is preempted by ERISA. Both remedies would effectively stay proceedings that are pending in the SCC. Although the Supreme Court of the United States has not yet ruled on the

issue, most courts agree that a declaratory judgment action is barred if it would interfere with state proceedings in a manner similar to a prohibited injunction. *See, e.g., U.S. Steel Corp. Plan v. Musisko*, 885 F.2d 1170, 1175 (3d Cir.1989), *cert. denied*, 493 U.S. 1074, 110 S.Ct. 1121, 107 L.Ed.2d 1028 (1990); *Ahrensfeld v. Stephens*, 528 F.2d 193, 197 n. 6 (7th Cir.1975); Erwin Chemerinsky, *Federal Jurisdiction* § 11.2, at 558 (1989). Valuing substance over nomenclature, this court agrees with these cases.

Perhaps the more controversial question is whether Congress has expressly authorized federal courts to enjoin state proceedings in which a party seeks to enforce state laws preempted by ERISA. The Supreme Court of the United States set forth a two-element test for the "express authorization" exception in *Mitchum v. Foster*, 407 U.S. 225, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972): 1) that the federal law confer a uniquely federal right or remedy; and 2) that the federal law "could be given its intended scope only by the stay of a state court proceeding." *Id.* at 237-38, 92 S.Ct. at 2159-60. Interpreting 42 U.S.C. § 1983, the Supreme Court held that the permission given courts to grant injunctive relief[1] was an express authorization exception to the Anti-Injunction Act. It emphasized, however, the legislative history suggesting that Congress "realized that state officers might, in fact, be antipathetic to the vindication of [federally created] rights; and it believed that these failings extended to the state courts." The Supreme Court concluded further that "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people as guardians of the people's federal rights." *Id.* at 242, 92 S.Ct. at 2162. Obviously, it is less clear the extent to

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[1] 42 U.S.C. § 1983 imposes liability upon any person who acts "under color of" state law to deprive another of federal rights. This liability exists "in an action at law, *suit in equity*, or other proper proceeding for redress" (emphasis added).

which Congress intended exclusive federal jurisdiction to determine whether ERISA preempts a particular state cause of action.

The only other Supreme Court case on point arguably suggests that the state proceeding in this case would itself have to be a violation of federal law. In *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 97 S.Ct. 2881, 53 L.Ed.2d. 1009 (1977), a plurality of the Court, reversing the court below, found that § 16 of the Clayton Act[2] was not an express authorization for injunctions of state court proceedings. Distinguishing *Mitchum* on the second of its two-element test, the plurality of three Justices for whom Justice Rehnquist wrote noted that, whereas a strong distrust of state judiciaries had motivated § 1983, no such motive was implicated by § 16 of the Clayton Act. Every other Justice, two in concurrence and four in dissent, suggested that a state lawsuit could be enjoined if the litigation itself were an antitrust violation. *See id.* at 644-46, 97 S.Ct. at 2894-95 (Blackmun, J., concurring); *id.* at 652-54, 97 S.Ct. at 2898-99 (Stevens, J., dissenting). Thus, both *Mitchum* and *Vendo Co.* (including the concurrence and dissent) suggest that ERISA's authorization for injunctions does not qualify as an exception to the Anti-Injunction Act in the context of the case at bar: nothing in the record suggests that Congress distrusted state courts to rule on an ERISA preemption defense or that the state litigation itself violates ERISA.

The Third and Fifth Circuits have clearly held that 29 U.S.C. § 1132(a)(3) does not authorize an injunction against state proceedings. *See, e.g., The 1975 Salaried Retirement Plan v. Nobers*, 968 F.2d 401 (3d Cir. 1992); *Total*

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[2]Section 16, at 15 U.S.C. § 26, entitles a party "to sue for and have injunctive relief, in any court of the United States . . . against threatened loss or damage by a violation of the antitrust laws" under the same principles used by courts of equity to prevent harm generally.

Plan Services, Inc. v. Texas Retailers Ass'n, 925 F.2d 142 (5th Cir. 1991).

The Second and Sixth Circuits, on the other hand, have held that an injunction is authorized to stop state proceedings that threaten to tread on areas committed by Congress exclusively to ERISA regulation.[3] *See Gilbert v. Burlington Indus., Inc.*, 765 F.2d 320 (2d Cir. 1985), *aff'd without opinion*, 477 U.S. 901, 106 S.Ct. 3267, 91 L.Ed.2d 558 (1986); *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980). The Commonwealth disputes the reach of these cases. Disposing summarily of the last of two "remaining contentions" in the case and citing only 29 U.S.C. § 1132(a)(3) in support, the *Gilbert* court stated simply that a fiduciary of a welfare benefit plan is authorized to seek an injunction of state proceedings. 765 F.2d at 329. The court provided no explanation, failing even to acknowledge the possibility that this ERISA provision did not suffice as an express authorization for purposes of the Anti-Injunction Act.

More analysis was provided by the Sixth Circuit in *Buha*. There, a plan fiduciary that was not a litigant in the state proceedings sought an injunction in federal court against state proceedings to enforce a writ of garnishment served on the trustee of a pension fund. The Sixth Circuit concluded that "[w]hen a district court finds that an action in a state court will have the effect of making it impossible for a fiduciary of a pension plan to carry out its responsibilities under ERISA," the court may enjoin that action notwithstanding the Anti-Injunction Act. *Buha*, 623 F.2d at 459.

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[3] ERISA would not be the only area over which the circuits have split. One commentator has observed that "there is a substantial split among lower courts as to whether specific statutes, such as the federal securities laws and the federal environmental laws, should be regarded as expressly authorizing injunctions of state court proceedings." Chemerinsky, *supra*, § 11.2.2, at 563 (footnote omitted).

The decision was based on the second element of the *Mitchum* test. Concerning that element and the necessity of staying state court proceedings to give ERISA its "intended scope," the court stressed that "[i]t is central to the statutory scheme that ERISA not be subject to state and local laws which might frustrate its goals." *Id.*

That logic is not persuasive. Certainly, no one would dispute that where ERISA preempts state law, state law should not be applied, whether the state law frustrates ERISA's goals or not. The question is whether ERISA preempts state law in this particular case, and the SCC is competent to answer that question. Staying the SCC proceeding is therefore not necessary to give ERISA its "intended scope." The Sixth Circuit's reasoning failed sufficiently to weigh the general rule that "when a state proceeding presents a federal issue, even a preemption issue, the proper course is to seek resolution of that issue by the state court." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 149-50, 108 S.Ct. 1684, 1691-92, 100 L.Ed.2d 127 (1988); *see also Texas Employers' Ins. Ass'n v. Jackson*, 862 F.2d 491, 498 (5th Cir. 1988) (noting that "construction and application of [the Anti-Injunction Act] is not to be influenced by any 'assumption . . . that federal rights will not be adequately protected in the state courts' ") (citing *Amalgamated Clothing Workers v. Richman Bros.*, 348 U.S. 511, 75 S.Ct. 452, 99 L.Ed. 600 (1955)).

Superior logic grounds the decision in *Nobers* wherein the Third Circuit, true to the actual approach taken in *Mitchum*, stated that there was "no evidence that Congress so distrusted state courts that it expected that state courts would fail to comply in good faith with the supersedure and exclusive jurisdiction provisions of ERISA." *Id.* at 410. Thus, ERISA differs significantly from § 1983. The same court in *U.S. Steel Corp. Plan v. Musisko*, 885 F.2d 1170, 1178 (3d Cir. 1989), the original Third Circuit case finding

ERISA did not fit within an Anti-Injunction Act exception, questioned and distinguished *Buha* and flatly rejected *Gilbert* because it failed to explain its reasoning. In *Musisko*, the court noted that in *Buha*, "the fiduciary was not a party to the state court proceedings, and could not have raised its objections to garnishment there." *Id.* Given that distinction and because ERM and the Trust are the defendants in the SCC proceeding, the Third Circuit would clearly find here that the SCC proceeding cannot be enjoined.

In *Texas Retailers*, 925 F.2d at 145 n. 3, the Fifth Circuit rejected the rationale of *Buha*. The district court below had been asked by an insurance company and other plaintiffs to enjoin state proceedings and declare that the state claims brought by a trust and other defendants were preempted by ERISA. Plaintiffs sought that relief after the state court ruled against them. Finding that the Anti-Injunction Act prohibited such an injunction and that the declaratory judgment suit was a "patent attempt" by the insurance company to circumvent the state court proceedings, the district court dismissed the complaint. *Id.* at 143. The Fifth Circuit affirmed this decision, finding the reasoning of *Musisko* accorded with Supreme Court precedent. *Id.* at 145.

The Supreme Court has not addressed the specific question whether ERISA expressly authorizes an injunction against state court proceedings. Conceivably, it could find that some substantive provision of ERISA might be violated by the mere process of state litigation, in which case an injunction of state proceedings might lie. But that circumstance is not presented where, as here, a defendant in a state proceeding simply fears that the state tribunal will not agree that certain state claims are preempted by ERISA. In any event,

> [a]ny doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an

> orderly fashion to finally determine the controversy. The explicit wording of § 2283 itself implies as much, and the fundamental principle of a dual system of courts leads inevitably to that conclusion.

Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 297, 90 S.Ct. 1739, 1748, 26 L.Ed.2d 234 (1970). This same "fundamental principle" gives rise to another basis for not enjoining the SCC proceeding.

2. *Younger* Abstention

Abstention under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), requires, at a minimum, "(i) that there is a pending state judicial proceeding; (ii) that the action implicates important state interests and (iii) that there is an adequate opportunity for the plaintiff to raise federal constitutional claims in a state forum." *National Home Ins. Co. v. State Corp. Comm'n*, 838 F.Supp. 1104, 1117 (E.D.Va.1993) (citing *Middlesex Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed2d 116 (1982)). But even if the three minimum conditions are met, "[a]bstention is still inappropriate if plaintiff can show that (i) the challenged [state] statute 'flagrantly and patently' violates express constitutional provisions or (ii) that plaintiff will suffer irreparable injury if the federal court abstains because there is no adequate remedy at law." *National Home*, 838 F.Supp. at 1119 (citing *Younger*, 401 U.S. at 53-54, 91 S.Ct. at 755).

The facts and arguments in this case implicate only two of these issues. None of the parties suggests that ERM could not raise its federal defense of preemption in the state proceedings, nor that state proceedings were not pending at the time the injunction suit was filed. Additionally, ERM does not allege irreparable injury. Thus, the court need

address only the importance of state interests and the possibility of flagrant unconstitutionality.

a. Important State Interests

The progeny of *Younger v. Harris* is instructive in assessing the importance of state interests in an abstention analysis. The *Younger* doctrine was extended to civil cases in which a state government is a party in *Huffman v. Pursue, Ltd*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). After losing a civil nuisance suit brought by state officials in state court, the defendant movie theater brought a § 1983 injunction and declaratory judgment suit in federal district court. On appeal, the *Huffman* Court held that the interests in this civil action were similar enough to those in a criminal proceeding to warrant the extension of *Younger*. This degree of similarity, subsequent cases clarified, is not strictly required, however. In a civil fraud proceeding instituted in state court by the Illinois Department of Public Aid, the court decided that *Younger* can apply to civil proceedings, like the instant one, in which a state is a party. *See Trainor v. Hernandez*, 431 U.S. 434, 444, 97 S.Ct. 1911, 1918, 52 L.Ed.2d 486 (1977) (finding *Younger* applicable to interference "with an ongoing civil enforcement action . . . brought by the State in its sovereign capacity"). It is clear now that *Younger* can also be applied even in private civil litigation, *see Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 107 S.Ct. 1519, 95 L.Ed.2d 1 (1987), but not in all such litigation, *see New Orleans Public Service, Inc. (NOPSI) v. Council of City of New Orleans*, 491 U.S. 350, 109 S.Ct. 2506, 105 L.Ed.2d 298 (1988).

Pennzoil and *NOPSI* help to describe the basic dimensions of *Younger's* "important state interest" requirement, but greater insight into the doctrine's precise contours can come only from lower court cases. In *Pennzoil*, the Supreme court found a federal court should have abstained from

hearing Texaco's constitutional challenge to a Texas law that apparently would have required Texaco to post a $13 billion bond in order to appeal an extremely adverse judgment rendered in Texas state trial court. The majority reasoned that a concern for "comity" mandated abstention:

> This concern mandates application of *Younger* absention not only when the pending state proceedings are criminal, but also when certain civil proceedings are pending, if the State's interests in the proceeding are so important that exercise of the federal judicial power would disregard the comity between the States and the National Government.

Pennzoil, 481 U.S. at 11, 107 S.Ct. at 1526. Rejecting Texaco's argument that important state interests were not implicated, the Supreme Court found that the state was significantly interested in "the processes by which the State compels compliance with the judgments of its courts." *Id.* at 13-14, 107 S.Ct. at 1527-28; *see also id.* at 14, 107 S.Ct. at 1527 (reasoning that "[s]o long as those challenges [to the process by which state judgments are obtained] relate to pending state proceedings," comity demands abstention). Thus, *Pennzoil's* reasoning does not clearly determine the outcome where the challenged state statute does not relate to such a process. And ERM challenges not the state process, but the applicability of state regulation to its business.

NOPSI confirmed that *Younger* does not apply to all civil litigation. There, a city council filed a declaratory judgment action in state court to verify the propriety of its refusal to permit NOPSI, a utility company, to increase the rates charged to consumers. NOPSI later sued in federal court to challenge the constitutionality of the council's decision. *NOPSI*, 491 U.S. at 355-58, 109 S.Ct. at 2511-13. On appeal, the Supreme Court held that *Younger* abstention was not required "in deference to a state judicial proceeding

reviewing legislative or executive action."[4] *Id.* at 368, 109 S.Ct. at 2518.

Lower courts have concluded that state interests like those at stake in the instant case are important enough to warrant *Younger* abstention. In *Kim-Stan, Inc. v. Department of Waste Management*, 732 F.Supp. 646, 652 (E.D. Va.1990) (Merhige, J.), the court found the interest of a state in "the health and safety of its citizens" qualifies as an important state interest justifying *Younger* abstention. An even more relevant qualifying interest, found in a case where the SCC was the defendant, is a state's interest "in protecting consumers from the potential hazards generated by continued operation of financially troubled risk retention groups." *National Home*, 838 F.Supp. at 1117. It seems clear, then, and ERM concedes, "that Virginia has a strong interest in the enforcement of its insurance laws." Plaintiffs' Opposition, at 33. The importance of the state interest is only strengthened by the role of the state as the plaintiff in the state proceeding. *See Trainor*, 431 U.S. at 444, 97 S.Ct. at 1918. ERM argues, however, that this interest is totally preempted by ERISA unless ERM's arrangement is a MEWA, which implicates the question at the heart of the litigation.

The thrust of ERM's argument against absention, therefore, is that ERISA preemption negates any important state interest, and second, that preemption is so patent as to preclude abstention. Neither argument is correct, as the Supreme Court's discussion in *NOPSI* clearly demonstrates.

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[4] In explaining this statement, however, the Court assumed "that the *Council proceeding* [had to] be the sort of proceeding entitled to *Younger* treatment." *Id.*, 401 U.S. at 369, 91 S.Ct. at 657 (emphasis in original).

Concerning the first point, that alleged preemption offsets any state interest, the Supreme Court noted

> when we inquire into the substantiality of the State's interest in its proceedings we do not look narrowly to its interest in the *outcome* of the particular case — which could arguably be offset by a substantial federal interest in the opposite outcome. Rather, what we look to is the importance of the generic proceedings to the State.

NOPSI, 491 U.S. at 365, 109 S.Ct. at 2516. Thus, although it is possible that ERM could prevail on the issue of federal preemption and although this would mean Virginia has no interest in the outcome of regulating ERM, this possibility does not change the dispositive generic state interest: that in enforcing states insurance laws.

b. Patent Unconstitutionality

On the second point, concerning patently or flagrantly unconstitutional state regulation, the Supreme Court in *NOPSI* acknowledged that a "facially conclusive" claim of federal preemption might be sufficient to render absentention inappropriate,[5] but found the claim was not so obvious in that case. It reasoned that "what requires further factual inquiry can hardly be deemed 'flagrantly' unlawful for purposes of a threshold abstention determination." *Id.* at 367, 109 S.Ct. at 2517. This exception to the *Younger* doctrine is extremely narrow. *See* Chemerinsky, *supra*, § 13.4, at 653-54. The Supreme Court has never found a case within this exception, and district court cases are almost as rare. *See National Home*, 838 F.Supp. at 1119 n. 36 ("The 'flagrantly unconstitutional' abstention exception has been so narrowly

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[5] Just as the Supreme Court left unresolved the issue of the effect of a "facially conclusive" preemption claim in *NOPSI*, so did the Fourth Circuit in its recent decision in *Martin Marietta Corp. v. Maryland Comm'n on Human Relations*, 38 F.3d 1392 (1994).

construed as to be rendered 'virtually meaningless'.") (citing *Simopoulos v. Virginia State Bd. of Medicine*, 644 F.2d 321, 328 (4th Cir.1981)). *But see Tolbert v. City of Memphis*, 568 F.Supp. 1285 (W.D.Tenn.1983) (finding abstention was not required in the case of selective enforcement of a city ordinance proscribing public exposure of female breasts).

The facts here certainly do not tempt the court to add this case to that limited class of cases finding flagrant unconstitutionality. Without deciding the degree of deference to which the DOL opinion is entitled in considering the merits of the case, that it found ERISA does not preempt state regulation of ERM obviously suggests preemption is not flagrant or patent. Moreover, without analyzing the facts in depth, it is apparent that the SCC can reasonably argue that ERM has established an arrangement to benefit "the employees of two or more employers," 29 U.S.C. § 1002(40)(A), such that state regulation is not necessarily preempted.

CONCLUSION

The Anti-Injunction Act and the *Younger* doctrine necessarily reward the party initiating litigation by favoring its choice of a state forum. They are not unlike other legal doctrines, then, that allow plaintiffs to be the masters of their lawsuits. Under the policy established by all of these doctrines, the defendant must have a compelling reason to disturb the plaintiff's choice of forum. Here, none exists. Although federal law is relevant, it is so only in defense of the action that arises under state law. Moreover, comity and Congress demand that this court not interfere with the proceeding first initiated by the SCC in the state judiciary.

For all of these reasons, defendants' motion to dismiss Case I (3:94cv148) is granted, and plaintiff's motion to remand Case II (3:94cv157) is also granted.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

It is so ORDERED.